

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN/WATERLOO DIVISION

UNITED STATES OF AMERICA,) No. CR11-2041
vs.)
Plaintiff,) COUNTS 1 and 2
vs.) 18 U.S.C. § 287: False Claim for Tax
Defendant.) Refund
vs.)
GENE JIRAK,) COUNT 3
vs.) 18 U.S.C. § 510(a)(2): Uttering a
Defendant.) Forged Treasury Check
vs.)
vs.) COUNT 4
vs.) 18 U.S.C. § 1341: Mail Fraud
vs.)
vs.) COUNT 5
vs.) 18 U.S.C. § 1028A:
vs.) Aggravated Identity Theft

SUPERSEDING INDICTMENT

The Grand Jury charges:

INTRODUCTION

At all times relevant to this Indictment:

1. Defendant GENE JIRAK resided in Winneshiek County, Iowa, within the Northern District of Iowa. Defendant GENE JIRAK was married to J.K. until they obtained a divorce in July 2009.
2. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury ("Treasury Department") responsible for enforcing and administering the tax laws of the United States and collecting taxes owed to the United States.

PRESENTED IN OPEN COURT
BY THE
FOREMAN OF THE GRAND JURY
IN THE PRESENCE OF THE
GRAND JURY

And filed 1/24/2012
ROBERT L. PHELPS, CLERK

The 2005 Tax Return

3. On or about January 9, 2009, defendant GENE JIRAK filed an amended joint tax return, Form 1040X, with the IRS for the tax year 2005 ("the 2005 tax return"). The 2005 tax return appeared to be filed on behalf of both defendant GENE JIRAK and his wife J.K. Defendant GENE JIRAK's wife was unaware that the 2005 tax return was filed.

4. Attached to the 2005 tax return were five IRS 1099-OID Forms ("the forms") which were purportedly issued by four separate financial institutions. The forms purported to show each of the named financial institutions withheld, for payment to the IRS, income tax due on various investments owned by or financial obligations owed by defendant GENE JIRAK. These forms, if legitimate, would allow defendant to claim a refund of taxes from the IRS. In fact, the forms were fraudulent. None of the financial institutions named on the forms issued the forms defendant GENE JIRAK provided to the IRS. None of the financial institutions named on the forms withheld the amounts shown on the forms. Based on these false forms, defendant GENE JIRAK used the 2005 tax return to fraudulently claim a refund in the amount of \$56,999.00.

5. Based upon the false 2005 tax return, on March 6, 2009, the IRS issued a Treasury Department check in the amount of \$69,139.07 (reflecting the amount of the refund plus interest) ("the Treasury check"), made payable to defendant GENE JIRAK and J.K. J.K. never saw or endorsed the Treasury check.

6. On or about March 9, 2009, defendant GENE JIRAK presented the Treasury check for deposit at Viking State Bank & Trust in Decorah, Iowa. At the time the check was presented, it bore a forged endorsement signature of J.K. When Viking State Bank & Trust determined J.K.'s endorsement was forged, the bank returned the Treasury check to the IRS.

The 2008 Tax Return

7. On or about March 27, 2009, defendant GENE JIRAK electronically filed a tax return with the IRS for the tax year 2008 for himself in Single filing status ("the 2008 tax return"). On the 2008 tax return, defendant GENE JIRAK falsely claimed three financial institutions withheld, for payment to the IRS, income tax due on various investments owned by defendant GENE JIRAK. These claims, if legitimate, would allow defendant to claim a refund from the IRS. In fact, the claims were fraudulent. None of the financial institutions named on the 2008 tax return withheld the amounts shown on the forms. Based on these false claims, defendant GENE JIRAK used the 2008 tax return to fraudulently claim a refund in the amount of \$53,787.00.

COUNT 1

False Claim for Tax Refund

8. Paragraphs 1 through 6 of this Indictment are incorporated as if fully set forth here.

9. On or about January 9, 2009, in the Northern District of Iowa, defendant GENE JIRAK made and presented to the United States Treasury Department and the

Internal Revenue Service a claim against the United States for payment of a tax refund in the amount of \$56,999.00, which defendant GENE JIRAK then and there knew to be false, fictitious, and fraudulent. Defendant GENE JIRAK's false claim was contained in a false amended United States Individual Income Tax Return Form 1040X, for the tax year 2005, which was presented to the Treasury Department, through the IRS.

This was in violation of Title 18, United States Code, Section 287.

COUNT 2

False Claim for Tax Refund

10. Paragraphs 1, 2 and 7 of this Indictment are incorporated as if fully set forth here.

11. On or about March 27, 2009, in the Northern District of Iowa, defendant GENE JIRAK made and presented to the United States Treasury Department and the Internal Revenue Service a claim against the United States for payment of a tax refund in the amount of \$53,787.00, which defendant GENE JIRAK then and there knew to be false, fictitious, and fraudulent. Defendant GENE JIRAK's false claim was contained in a false United States Individual Income Tax Return Form 1040, for the tax year 2008, which was presented to the Treasury Department, through the IRS.

This was in violation of Title 18, United States Code, Section 287.

COUNT 3

Uttering a Forged Treasury Check

12. Paragraphs 1 through 6 of this Indictment are incorporated as if fully set forth here.

13. On or about March 9, 2009, in the Northern District of Iowa, defendant GENE JIRAK, with the intent to defraud, did pass, utter, and publish, and attempt to pass, utter, or publish, as true a Treasury Department check of the United States bearing the falsely made and forged endorsement of "J.K." thereon, said check being check number 06024358 and dated March 6, 2009.

This was in violation of Title 18, United States Code, Section 510(a)(2).

COUNT 4

Mail Fraud

14. Paragraphs 1 through 6 of this Indictment are incorporated as if fully set forth here.

15. In about January 2009, defendant GENE JIRAK devised and intended to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations. In particular, defendant JIRAK devised a scheme to obtain a tax refund under false pretenses by submitting fabricated 1099-OID forms purporting issued by four financial institutions to show substantial funds had been withheld for taxes, when the four financial institutions had issued no such forms and no such taxes were withheld.

Execution of the Scheme to Defraud

16. The scheme and artifice to defraud and obtain money was carried out, in part, as follows:

- a. On or about January 9, 2009, defendant GENE JIRAK fabricated five false 1099-OID forms purported to be from four financial institutions and purporting to show those financial institutions withheld \$70,919.66 in taxes.
- b. On or about January 9, 2009, defendant JIRAK created a false amended joint tax return, Form 1040X, for the tax year 2005, referencing and attaching the fabricated and false 1099-OID forms, which tax return purported to show defendant JIRAK and his ex-wife were entitled to a tax refund of \$56,999.00.

The Mailing

17. On or about January 9, 2009, in the Northern District of Iowa, defendant GENE JIRAK, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations, did knowingly place in an authorized depository for mail, to be sent and delivered by the Postal Service, the amended joint tax return, Form 1040X, for the tax year 2005.

This was in violation of Title 18 United States Code § 1341.

COUNT 5

Aggravated Identity Theft

18. On or about January 9, 2009, in the Northern District of Iowa, defendant GENE JIRAK, did knowingly use without lawful authority a means of identification of another person during and in relation to the offense set out in COUNT 4 above. Specifically, defendant GENE JIRAK used his wife's name and Social Security number without her permission on the amended joint tax return, Form 1040X, for the tax year 2005.

This was in violation of Title 18, United States Code, Section 1028A(a)(1).

A TRUE BILL

/s/Foreperson

FOREPERSON

1/24/12

Date

STEPHANIE M. ROSE
United States Attorney

By:

By:

C.J. WILLIAMS
Assistant United States Attorney